



Claimant alleges that he was exposed to toxic fumes at a rest-stop restroom on June 4, 1994. He was hospitalized and treated for toxic fume inhalation "probably containing ammonia." He spent the night in the hospital then returned approximately one week later to his work, driving a truck for the respondent. Claimant testified that on June 12 he was driving a truck with an exhaust leak. It became hard for him to breath. He developed a headache and nausea. He did not work between June 12 and July 24. On July 24 when he returned to driving, the dust and exhaust fumes prompted the same symptoms.

The evidentiary record includes reports and records from four physicians. Dr. Repsher, a physician to whom respondent referred claimant, concluded claimant has a hyperventilation syndrome complicated by a vocal cord dysfunction syndrome. He found no objective evidence of any occupational lung disease, in fact, no objective evidence of lung disease of any kind.

Dr. Howard examined claimant at the emergency room on June 4, 1995 and performed additional testing on November 16, 1995. His notes of November 21, 1995 state his conclusion that claimant has a reactive airway disease probably secondary to the incident at the local truck stop where he inhaled irritating fumes and vapors. He concludes, on the other hand, claimant's current symptoms are not related to the inhalation of exhaust fumes.

Dr. Dennis A. Estep saw claimant on June 15, 1995 and states that his impression is that claimant suffers from "chemical inhalation."

Dr. David D. Johnson, claimant's family physician, states in a letter of October 23, 1995 that:

"Reviewing the time frame with Mr. Baker's reaction to diesel smoke and diesel fumes, the initial inhalation and allergic response on 6-4-95 has triggered his immune system to respond to diesel fumes and diesel smoke."

With the exception of Dr. Repsher, the records and reports suggest a connection exists between the claimant's exposure to chemicals and/or fumes and the current need for medical treatment. The Appeals Board, therefore, affirms the finding by the Assistant Director. For purposes of preliminary hearing the claimant's injury did arise out of and in the course of his employment.

(3) Respondent's challenge to the designation of Dr. Johnson as treating physician does not raise an issue subject to review on appeal from a preliminary order. Issues to be considered on appeals from preliminary orders are limited to those alleging that the administrative law judge exceeded his or her jurisdiction. K.S.A. 44-551. The Appeals Board has previously held that the administrative law judge may designate a physician when none has been designated at the time of the preliminary hearing. Respondent asserts that the current circumstances amount to a change of physician because respondent, at a benefit review conference, had designated Dr. Repsher. Designation of a physician who has determined claimant has no injury is analogous to having no authorized physician. The Assistant Director did not exceed his jurisdiction and the Order remains in effect as originally entered.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Assistant Director Brad Avery dated December 28, 1995, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Derek J. Shafer, Topeka, Kansas  
       Matthew S. Crowley, Topeka, Kansas  
       Brad Avery, Assistant Director  
       Philip S. Harness, Director